

SUBCHAPTER 6. RULES OF PROFESSIONAL CONDUCT (Version 11/19/2012)

7:26I-6.1 Purpose

(a) This subchapter sets forth the code of conduct that shall be followed by all LSRPs in the performance of professional services so as to achieve the expected standard of professionalism. The failure to abide by this code of conduct shall constitute the grounds for disciplinary action, including suspension or revocation of a license, pursuant to N.J.A.C. 7:26I-7.

(b) At all times, in the performance of professional services, an LSRP's highest priority shall be the protection of public health and safety and the environment.

7:26I-6.2 Professional Competency

(a) An LSRP shall exercise reasonable care and diligence, and shall apply the knowledge and skill ordinarily exercised by LSRPs in good standing practicing in the State at the time the services are performed.

(b) An LSRP shall not provide professional services outside his areas of professional competency, unless the LSRP has relied upon the technical assistance of another professional whom the LSRP has reasonably determined to be qualified by education, training, and experience.

7:26I-6.3 Engineering Services

(a) An LSRP shall not perform services that constitute the practice of professional engineering unless the LSRP is a professional engineer licensed in the State.

7:26I-6.4 Notification of Retention and Release

(a) An LSRP retained by a person responsible for conducting the remediation shall notify the Department within 15 calendar days after being retained. In addition, an LSRP shall notify the Department within 15 calendar days after being released from responsibility for a remediation if the release occurs prior to issuance of the response action outcome for the site by the LSRP.

7:26I-6.5 Correcting Deficiencies

(a) An LSRP and the person responsible for conducting the remediation shall correct any deficiency the Department identifies in a document submitted concerning a remediation. The deficiency shall be corrected in accordance with timeframes established by the Department.

7:26I-6.6 Responsibility of Successor LSRP

(a) An LSRP may complete any phase of remediation based on remediation work performed under the supervision of another LSRP, provided that the LSRP:

1. reviews all available documentation on which he relies;
2. conducts a site visit to observe current conditions and to verify the status of as much of the work as is reasonably observable; and
3. concludes, in the exercise of his independent professional judgment, that there is sufficient information upon which to complete any additional phase of remediation and prepare workplans and reports related thereto.

(b) An LSRP who has taken over the responsibility for the remediation of a contaminated site from another LSRP shall address all deficiencies in a document submitted by the previous LSRP, including those identified by the Department, in accordance with timeframes established by the Department.

(c) An LSRP who has taken over the responsibility for the remediation of a contaminated site from another LSRP before the issuance of a response action outcome, and who learns of material facts, data or other information concerning a phase of the remediation for which a report was submitted to the Department and the material facts, data or other information were not disclosed in the report, shall promptly notify the client and the Department in writing of those material facts, data or other information.

7:26I-6.7 Criteria for Certifying a Document

(a) An LSRP shall not certify any document submitted to the Department unless the LSRP has managed, supervised or performed the work that is the basis of the submission, or has periodically reviewed and evaluated the work performed by other persons that forms the basis for the information in the submission, or has completed the work of another LSRP and has concluded such work is reliable pursuant to N.J.A.C. 7:26I-6.6.

7:26I-6.8 Exercise of Independent Professional Judgment

(a) An LSRP shall exercise independent professional judgment, comply with the requirements and procedures set forth in the provisions of N.J.S.A. 58:10C-1 et seq. and any regulations promulgated pursuant thereto. An LSRP shall make a good faith and reasonable effort to identify and obtain the relevant and material facts, data, reports and other information evidencing conditions at a contaminated site for which he is responsible in possession of the owner of the property, or otherwise available, and identify and obtain whatever additional data and other information as the LSRP deems necessary.

(b) An LSRP shall disclose and explain in any document submitted to the Department any facts, data, information, qualifications, or limitations known by the LSRP that are not supportive of the conclusions reached in the document.

7:26I-6.9 Responsibility to Report an Immediate Environmental Concern

(a) If an LSRP identifies a condition at a contaminated site that in his independent professional judgment is an immediate environmental concern as defined by the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-1.8, then the LSRP shall:

1. Immediately verbally advise the person responsible for conducting the remediation of that person's duty to notify the Department of the condition; and
2. Immediately notify the Department of the condition by calling the Department's telephone hotline.

7:26I-6.10 Responsibility to Report a Discharge

(a) If an LSRP obtains specific knowledge that a discharge as defined by the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-1.8, has occurred on a contaminated site for which he is responsible, the LSRP shall:

1. Notify the person responsible for conducting the remediation of the existence of the discharge; and
2. Notify the Department of the discharge by calling the Department's telephone hotline.

(b) The person responsible for conducting the remediation shall also be responsible for notifying the Department of the existence of the discharge.

(c) This provision shall not apply to a discharge that may be a result of the existence of historic fill material.

7:26I-6.11 Deviation from Workplan by Client

(a) If an LSRP learns of an action or decision by a client that results in a deviation from the remedial action workplan or other report concerning the remediation developed by the LSRP, the LSRP shall promptly notify the client and the Department, in writing, of the deviation.

7:26I-6.12 Client Confidentiality

(a) An LSRP shall not reveal information obtained in a professional capacity, except as may be authorized or required by law, without the prior consent of the client, if the client has notified the LSRP, in writing, that the information is confidential. The provisions of this subsection shall not apply to information that is in the public domain.

7:26I-6.13 New Information after Submitting Report

(a) An LSRP who learns of material facts, data or other information subsequent to the completion of a report concerning a phase of remediation, which would result in a report with material differences from the report submitted, shall promptly notify the client and the Department in writing of those facts, data, information, and circumstances.

7:26I-6.14 Responsibility of LSRP to Disassociate from Unscrupulous Persons

(a) An LSRP shall not allow the use of his name by a person, and shall not associate with a person in a business venture, if the LSRP knows or should know that the person engages in fraudulent or dishonest business or professional practices regarding the professional responsibilities of an LSRP.

7:26I-6.15 Responsibility of LSRP in Board and Department Investigations

(a) An LSRP shall cooperate in an investigation by the Board or the Department by promptly furnishing, in response to requests, orders or subpoenas, any information the Board or the Department, or persons duly authorized by the Board or the Department, deems necessary to perform its duties. In an investigation by the Board of a license application or a license suspension or revocation, an LSRP shall not:

1. Knowingly make a false statement of material fact;
2. Fail to disclose a fact necessary to correct a material misunderstanding known by the LSRP to have arisen in the matter;
3. Knowingly and materially falsify, tamper with, alter, conceal, or destroy any document, data record, remedial system, or monitoring device that is relevant to the investigation, without obtaining the prior approval of the Department; or
4. Knowingly allow or tolerate any employee, agent, or contractor of the LSRP to engage in any of the foregoing activities.

7:26I-6.16 Circumstances under which Supervising LSRP Is Held Responsible for Subordinate LSRP

(a) An LSRP shall be jointly responsible for a violation of any provision of this subchapter committed by another LSRP whose work he supervises or reviews if:

1. The LSRP orders, directs, or agrees to the provision of professional services conducted or prepared by another LSRP under his supervision;
2. The LSRP knows that the professional services constitute a violation of this subchapter; and
3. The LSRP fails to take reasonable steps to avoid or mitigate the violation.

7:26I-6.17 Duty to Comply with Board Directives Regarding Disciplinary Matters

(a) An LSRP shall comply with all conditions imposed by the Board as a result of a license suspension or other disciplinary proceeding conducted by the Board.

7:26I-6.18 Duty Regarding Client Communications

(a) An LSRP shall inform a client or prospective client of any relevant and material assumptions, limitations, or qualifications underlying their communication. Evidence that an LSRP has provided the client or prospective client with timely written documentation of these assumptions, limitations, or qualifications shall be deemed by the Board or the Department to have satisfied the requirements of this section.

7:26I-6.19 LSRP Shall Not Tout or Threaten Based on Connection to Agency or Official

(a) An LSRP shall not state or imply, as an inducement or a threat to a client or prospective client, an ability to improperly influence a government agency or official.

7:26I-6.20 Responsibilities Regarding Advertising or Description of Services

(a) In any description of qualifications, experience, or ability to provide services, an LSRP shall not knowingly:

1. Make a material misrepresentation of fact;
2. Omit a fact when the omission results in a materially misleading description; or
3. Make a statement that, in the opinion of the Board, is likely to create an unjustified expectation about results the LSRP may achieve, or state or imply that the LSRP may achieve results by means that violate the provisions of applicable environmental statutes, rules or regulations, including the provisions of N.J.S.A. 58:10C-1 et seq.

7:26I-6.21 Duty to Inform Even if No Longer Employed By Client

(a) An LSRP shall provide any notification to the Board or the Department required pursuant to this section, even if the LSRP is discharged by the client prior to doing so.

7:26I-6.22 Conflict of Interest

(a) An LSRP shall not accept compensation, financial or otherwise, for professional services pertaining to a contaminated site from two or more persons whose interests are adverse or conflicting unless the circumstances are fully disclosed and agreed to by all clients engaging the LSRP.

(b) An LSRP shall not be a salaried employee of the person responsible for conducting the remediation, or any related entities, for which the LSRP is providing remediation services.

(c) An LSRP shall not allow any ownership interest, compensation, or promise of continued employment, of the LSRP or any immediate family member, to affect the professional services provided by the LSRP.

7:26I-6.23 Certification of Documents by LSRP

(a) For any site for which an LSRP is required to be hired pursuant to the provisions of N.J.S.A. 58:10B-1.3, the person responsible for conducting the remediation shall certify all documents submitted to the Department concerning the remediation of the contaminated site.

(b) The LSRP shall certify that the work was performed, the LSRP managed, supervised, or performed the work that is the basis of the submission, and that the work and the submitted documents are consistent with all applicable remediation requirements adopted by the Department.

7:26I-6.24 Response Action Outcome

(a) Upon completion of the remediation, the licensed site remediation professional shall issue a response action outcome to the person responsible for conducting the remediation when, in the opinion of the licensed site remediation professional, the site has been remediated so that it is in compliance with all applicable statutes, rules and regulations protective of public health and safety and the environment.

(b) The LSRP shall file the response action outcome with the Department when it is issued to the person responsible for conducting the remediation.

7:26I-6.25 Maintenance of Data, Documents, and Information

(a) An LSRP shall maintain and preserve all data, documents and information concerning remediation activities at each contaminated site the LSRP has worked on, including but not limited to, technical records, contractual documents, raw sampling data and monitoring data. This obligation exists whether or not the data, documents and information concerning remediation activities at the site were developed by the LSRP or the LSRP's divisions, employees, agents, accountants, contractors or attorneys.

(b) One electronic copy of the records shall be submitted to the Department at the time the response action outcome is filed with the Department.

7:26I-6.26 Cooperation with Department Review of Remediation

(a) An LSRP and the person responsible for conducting the remediation shall provide any data, documents or other information as requested by the Department to conduct a review of any document submitted for the remediation of a contaminated site or in the review of the performance of a remediation pursuant to N.J.S.A. 58:10C-21.

(b) Unless directed otherwise by the Department, the person responsible for conducting the remediation and the LSRP may continue to conduct the remediation while the Department conducts any inspection or additional review of documents pursuant to N.J.S.A. 58:10C-21.

7:26I-6.27 Cooperation with Audit

(a) An LSRP and the person responsible for conducting the remediation shall cooperate with the Board in the conduct of an audit of the LSRP pursuant to N.J.A.C. 7:26I-5 and shall provide any information requested by the Board as part of the audit.

DRAFT